

HOUSE BILL 827

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Andy Nuñez

AN ACT

RELATING TO THE PRODUCTION OF OIL AND GAS; ENACTING THE SURFACE OWNERS PROTECTION ACT; STATING CERTAIN DUTIES OWED BY OIL AND GAS OPERATORS TO SURFACE OWNERS; REQUIRING NOTICE TO THE SURFACE OWNER OF OIL AND GAS OPERATIONS; REQUIRING A BOND OR OTHER SURETY IN CERTAIN CIRCUMSTANCES; PROVIDING FOR THE AWARD OF TREBLE DAMAGES IN CERTAIN CIRCUMSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Surface Owners Protection Act".

Section 2. DEFINITIONS.--As used in the Surface Owners Protection Act:

A. "oil and gas operations" means all activities affecting the surface owner's land that are associated with exploration, drilling or production of oil or gas, through

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1 final reclamation of the affected surface;

2 B. "operator" means a person with the legal right
3 to conduct oil and gas operations and includes the agents,
4 employees and contractors of that person;

5 C. "reclaim" means to substantially restore the
6 surface affected by oil and gas operations to the condition
7 that existed prior to oil and gas operations, or as otherwise
8 agreed to in writing by the operator and surface owner;

9 D. "surface owner" means a person who holds legal
10 or equitable title, as shown in the records of the county
11 clerk, to the surface of the real property on which oil and gas
12 operations are to take place;

13 E. "surface use and compensation agreement" means
14 an agreement between an operator and a surface owner specifying
15 the rights and obligations of the surface owner and the
16 operator concerning oil and gas operations; and

17 F. "tenant" means a person who occupies land or
18 premises belonging to another in subordination to the owner's
19 title and with the owner's assent, express or implied.

20 Section 3. COMPENSATION FOR OIL AND GAS OPERATIONS
21 VENUE.--

22 A. An operator shall compensate the surface owner
23 for the use of the surface owner's property and damages
24 sustained as a result of the operator's oil and gas operations.

25 B. An operator shall not be responsible for

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1 allocating compensation between the surface owner and any
2 tenant, except that an operator shall compensate a tenant of
3 the surface owner for any leasehold improvements damaged as a
4 result of the operator's oil and gas operations if the
5 improvements are approved and authorized by the surface owner.
6 The compensation shall equal the cost of repairing or replacing
7 the improvements.

8 C. An operator shall reclaim all the surface
9 affected by the operator's oil and gas operations.

10 Section 4. NOTICE OF OPERATIONS--PROPOSED SURFACE USE AND
11 COMPENSATION AGREEMENT.--

12 A. Prior to initial entry upon the land for
13 activities that do not disturb the surface, including
14 inspections, staking, surveys, measurements and general
15 evaluation of proposed routes and sites for oil and gas
16 operations, the operator shall provide at least five business
17 days' notice by certified mail or hand delivery to the surface
18 owner.

19 B. No less than thirty days before first entering
20 the surface of the land to conduct oil and gas operations, an
21 operator shall, by certified mail or hand delivery, give the
22 surface owner notice of the planned oil and gas operations.
23 The notice shall include:

24 (1) sufficient disclosure of the planned oil
25 and gas operations to enable the surface owner to evaluate the

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1 effect of the operations on the property;

2 (2) a copy of the Surface Owners Protection
3 Act;

4 (3) the name, address, telephone number and,
5 if available, facsimile number and electronic mail address of
6 the operator and the operator's authorized representative; and

7 (4) a proposed surface use and compensation
8 agreement addressing, at a minimum, the following issues:

9 (a) to the extent known, placement,
10 specifications, maintenance and design of well pads, gathering
11 pipelines and roads to be constructed for oil and gas
12 operations;

13 (b) terms of ingress and egress upon the
14 surface of the land for oil and gas operations;

15 (c) to the extent known, construction,
16 maintenance and placement of all pits and equipment used or
17 planned for oil and gas operations;

18 (d) use and impoundment of water on the
19 surface of the land;

20 (e) removal and restoration of plant
21 life;

22 (f) surface water drainage changes;

23 (g) actions to limit and effectively
24 control precipitation runoff and erosion;

25 (h) control and management of noise,

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1 weeds, dust, traffic, trespass, litter and interference with
2 the surface owner's use;

3 (i) interim and final reclamation;
4 (j) actions to minimize surface damages
5 to the property;

6 (k) operator indemnification for injury
7 to persons caused by the operator; and

8 (l) an offer of compensation for the use
9 of and damages to the surface resulting from the oil and gas
10 operations.

11 C. The notices required by this section shall be
12 given to the surface owner at the address shown by the records
13 of the county clerk at the time the notice is given. If legal
14 title and equitable title are not held by the same person,
15 notice shall be given to both the holder of legal title and to
16 the holder of equitable title at the addresses shown by the
17 records of the county clerk at the time the notice is given.

18 D. Upon receipt of the notice required by
19 Subsection B of this section, the surface owner may:

20 (1) accept the proposed surface use and
21 compensation agreement within twenty days; or

22 (2) reject the proposed surface use and
23 compensation agreement; provided that, failure to accept the
24 proposed agreement within twenty days shall be deemed to be a
25 rejection by the surface owner. If the proposed agreement is

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1 rejected, the surface owner may enter into negotiations with
2 the operator, including, if the parties agree, binding
3 arbitration or mediation.

4 E. Notices required by the Surface Owners
5 Protection Act shall be deemed to have been received five days
6 after mailing by certified mail or immediately upon hand
7 delivery.

8 Section 5. ENTRY WITHOUT AGREEMENT--BOND.--If, after
9 thirty days from a surface owner receiving notice pursuant to
10 Subsection B of Section 4 of the Surface Owners Protection Act,
11 no surface use and compensation agreement has been entered
12 into, the operator may enter the surface owner's property and
13 conduct oil and gas operations:

14 A. after depositing a surety bond, letter of credit
15 from a banking institution, cash or a certificate of deposit
16 with a New Mexico surety company or financial institution for
17 the benefit of the surface owner in the amount of ten thousand
18 dollars (\$10,000) per well location. The surety bond, letter
19 of credit, cash or certificate of deposit shall only be
20 released by the surety company or financial institution if:

21 (1) the surface owner provides notice that
22 compensation for damages has been paid;

23 (2) the surface owner and the operator have
24 executed a surface use and compensation agreement or otherwise
25 agreed that the security should be released;

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1 (3) there has been a final resolution of the
2 judicial appeal in any action for damages and any awarded
3 damages have been paid; or

4 (4) all wells have been plugged and abandoned
5 and the operator has not conducted oil and gas operations on
6 the surface owner's property for a period of six years; or

7 B. after posting a blanket surety bond, letter of
8 credit from a banking institution, cash or a certificate of
9 deposit with a New Mexico surety company or financial
10 institution in the sum of twenty-five thousand dollars
11 (\$25,000) subject to the following criteria:

12 (1) the surety company or financial
13 institution shall hold the corporate surety bond, letter of
14 credit, cash or certificate of deposit for the benefit of the
15 surface owners of this state and shall ensure that such
16 security is in a form readily payable to a surface owner
17 awarded damages in an action brought pursuant to the Surface
18 Owners Protection Act;

19 (2) the bond, letter of credit, cash or
20 certificate of deposit shall remain in full force and effect as
21 long as the operator continues oil and gas operations in New
22 Mexico;

23 (3) the bond, letter of credit, cash or
24 certificate of deposit shall not be released until six years
25 after the operator has deposited with the surety company or

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1 financial institution a certified statement from the oil
2 conservation division of the energy, minerals and natural
3 resources department that, according to the records of the
4 division, the operator is not the operator of record of any
5 well in New Mexico and does not hold any outstanding drilling
6 permits in New Mexico; and

7 (4) in the event that, pursuant to a judgment,
8 all or a portion of the bond, letter of credit, cash or
9 certificate of deposit has been used to pay a surface owner,
10 the operator shall immediately post additional security so that
11 the total amount posted equals twenty-five thousand dollars
12 (\$25,000) and, if the operator does not post the additional
13 security, the surety or financial institution shall publish
14 notice to that effect in a paper of general circulation in each
15 county of the state in which oil or gas is produced.

16 Section 6. DAMAGES.--In an action brought pursuant to the
17 Surface Owners Protection Act, if the court finds that
18 compensation is owed under Section 3 of the Surface Owners
19 Protection Act, the court may also award the prevailing party:

20 A. attorney fees and costs if:

21 (1) the operator conducted oil and gas
22 operations without providing notice as required by Subsection B
23 of Section 4 of the Surface Owners Protection Act;

24 (2) the operator conducted oil and gas
25 operations without a surface use and compensation agreement and

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1 before depositing a bond or other surety as required by Section
2 5 of the Surface Owners Protection Act;

3 (3) the operator conducted oil and gas
4 operations outside the scope of a surface use and compensation
5 agreement and, when entering into the agreement, knew or should
6 have known that oil and gas operations would be conducted
7 outside the scope of the agreement; or

8 (4) the surface owner failed to exercise good
9 faith in complying with the provisions of the Surface Owners
10 Protection Act or the terms of a surface use and compensation
11 agreement; or

12 B. attorney fees, costs and treble damages if the
13 court finds, by clear and convincing evidence, that:

14 (1) the operator willfully and knowingly
15 entered upon the premises for the purpose of commencing the
16 drilling of a well:

17 (a) without giving notice of the entry
18 as required by Subsection B of Section 4 of the Surface Owners
19 Protection Act; or

20 (b) without a surface use and
21 compensation agreement with the surface owner and before
22 depositing a bond or other surety pursuant to Section 5 of the
23 Surface Owners Protection Act; or

24 (2) either the surface owner or the operator
25 willfully and knowingly violated the surface use and

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1 compensation agreement.

2 Section 7. STATUTE OF LIMITATIONS.--A surface owner
3 entitled to bring an action pursuant to the Surface Owners
4 Protection Act shall bring the action within six years after
5 the damage has been discovered, or should have been discovered
6 through due diligence, by the surface owner.

7 Section 8. REMEDIES NOT EXCLUSIVE.--The remedies provided
8 by the Surface Owners Protection Act are not exclusive and do
9 not preclude a person from seeking other remedies allowed by
10 law.

11 Section 9. EMERGENCY SITUATIONS.--Notwithstanding any
12 provisions of the Surface Owners Protection Act to the
13 contrary, no notice, surface use and compensation agreement or
14 bond shall be required in emergency situations for activities
15 to protect health, safety or the environment.

16 Section 10. TEMPORARY PROVISION--APPLICABILITY.--The
17 provisions of the Surface Owners Protection Act apply to all
18 oil and gas operations commenced on or after July 1, 2007
19 except:

20 A. maintenance and ongoing production activities
21 related to an oil or gas well producing or capable of producing
22 oil or gas on June 30, 2007 for which the operator has a valid
23 permit from the oil conservation division of the energy,
24 minerals and natural resources department, provided that:

25 (1) reentries, workovers and other oil or gas

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1 operations are subject to that act if the activities disturb
2 additional surface; and

3 (2) the duty to reclaim, as stated in
4 Subsection C of Section 3 of that act, is applicable to such a
5 well that is not plugged and abandoned on July 1, 2007; and

6 B. oil and gas operations conducted within the
7 scope of an agreement, entered into prior to July 1, 2007,
8 between a surface owner and an operator that sets forth the
9 rights and obligations of the parties with respect to surface
10 activities conducted by the operator.

11 Section 11. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2007.